

## REMARKS

### **I. Introduction**

Claims 100 to 106 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Rejection of Claims 100 to 103 Under 35 USC §102(b)**

Claims 100 to 103 were rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,609,285 ("Grant et al."). Applicants respectfully submit that Grant et al. do not anticipate the present claims for the following reasons.

Claim 100 relates to a surgical device for at least one of cutting and stapling a section of tissue. Claim 100 recites that the surgical device includes a housing defining a bore and having a distal end. Claim 100 recites that the housing is for staples. Claim 100 recites that the surgical device includes a trocar shaft disposed through the bore of the housing so as to be moveable relative to the housing. Claim 100 recites that at least a portion of the trocar shaft that extends distally relative to the distal end of the housing is flexible. Claim 100 also recites that the surgical device includes an anvil attachable to the trocar shaft and configured to be moveable relative to the housing by movement of the trocar shaft. Claim 100 has been amended without prejudice to recite that at least a portion of the trocar shaft that extends distally relative to a *clamping face* at the distal end of the housing is flexible. Support for this amendment may be found, for example, at paragraph 101 of the Specification, which states that "[T]he distal end 2147 of the staple cartridge 214 defines a clamping face 2146." The clamping face is illustrated as element 2146 in Fig. 10(b).

It is respectfully submitted that Grant et al. do not anticipate claim 100 for at least the reason that Grant et al. do not disclose, or even suggest, all of the features recited in claim 100. For example, Grant et al. do not disclose, or even suggest, that at least a portion of the trocar shaft that extends distally relative to a *clamping face* at the distal end of the housing is flexible, as recited in amended claim 1.

The Office Action states that "[t]he origin defined in claim 100 is the distal end of the staple housing, however no reference is made to the point of origin that defines the end of the staple housing that is deemed distal. Thus, broadly interpreted, examiner has found the distal end of the housing 104 to be the end engaging spring 152, therefore a distal direction from this point of engagement would be towards the anvil 100. Therefore, Grant et

al. is found to disclose the invention as claimed, since figure 7...illustrates a flexible portion 84 of the trocar shaft to extend distally from the distal end of the housing 70...”

However, amended claim 100 clarifies that there is a *clamping face* at the distal end of the housing. Therefore, applicant respectfully submits that the location of the distal end of the housing has been misinterpreted by the Office Action. The Office Action found the distal end of the housing to be the end engaging the spring, as was indicated on the drawing on page 4 of the Office Action. However, the distal end of the housing, as indicated by amended claim 100, is the end engaging a clamping face. The clamping face is described in the Specification at paragraph 101 and is illustrated in Fig. 10(b) of the application.

Therefore, Fig. 7 of Grant et al. do not illustrate “a trocar shaft disposed through the bore of the housing so as to be moveable relative to the housing, wherein at least a portion of the trocar shaft that extends distally relative to a *clamping face* at the distal end of the housing is flexible” as recited in amended claim 1 and described in the Specification. In view of the foregoing, it is respectfully submitted that Grant et al. do not disclose, or even suggest, all of the features recited in claim 100. As such, it is respectfully submitted that Grant et al. do not anticipate claim 100.

As for claims 101 to 103, which ultimately depend from claim 100 and therefore include all of the features recited in claim 100, it is respectfully submitted that Grant et al. do not anticipate any of these dependent claims for at least the same reasons set forth above in support of the patentability of claim 100.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

### **III. Rejection of Claims 104 to 106 Under 35 U.S.C. § 103(a)**

Claims 104 to 106 were rejected under 35 U.S.C. § 103(a) as being obvious over Grant et al. in view of U.S. Patent No. 6,491,201 (“Whitman”). It is respectfully submitted that Grant et al. in view of Whitman do not render unpatentable the present claims for the following reasons. As discussed above, Grant et al. do not teach or suggest all of the limitations in amended claim 100, specifically that at least a portion of the trocar shaft that extends distally relative to a *clamping face* at the distal end of the housing is flexible. Applicant respectfully submits that Whitman also does not teach that at least a portion of the trocar shaft that extends distally relative to a *clamping face* at the distal end of the housing is flexible, as recited in amended claim 100.

Since the combination of Grant et al. and Whitman do not teach or suggest all of the limitations in amended claim 100, then the combination of Grant et al. and Whitman would not also render claims 104 to 106 unpatentable because the claims 104 to 106 ultimately depend from claim 100.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

**IV. Conclusion**


It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

**V. Fees**

The Commissioner is hereby authorized to charge the one-month \$60.00 extension fee and any other necessary fees that may be required or credit any overpayments to the deposit account of Kenyon & Kenyon LLP, Deposit Account No. 11-0600.

Respectfully submitted,

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